

### **REMARKS**

In the Office Action mailed March 25, 2011, claims 1, 3-6, 8-14, 16-20, 22, 24-25 were rejected. Through this amendment, claims 1, 14, 20 and 22 were amended. Support for the amendment to claims 1, 20 and 22 can be found in the specification at page 28, lines 6-14 and in Figures 15-18. Claim 14 was amended to improve the claim language. Claim 4 was canceled. No new matter has been entered. Claims 1, 3, 5-6, 8-14, 16-20, 22, 24-25 are currently pending. Applicants respectfully request favorable consideration of the present application in light of the amendment to the claims and the following remarks.

### **Information Disclosure Statement**

Of the references listed in the specification, US 6,093,205 was cited on Form PTO-892 attached to the instant Office Action and thus has been considered. UK Patent Application Nos. 0406851.6 and 0407717.8 listed on pages 5 and 19 of the specification are submitted in an Information Disclosure Statement and correspond to the priority documents for International Publication No. WO 2005/092248.

### **Double Patenting**

Claim 19 was rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of US 6,093,205 to McLeod et al. ("McLeod") in view of US 6,419,704 to Ferree ("Ferree"). The Office Action contends that claim 1 of McLeod fails to disclose the core being encapsulated by an additional inner fabric component and that it would have been obvious to one having ordinary skill in that art at the time of the invention to modify the core of McLeod with an additional layer of fabric of Ferree to increase the strength or longevity of the core. This rejection is respectfully traversed.

Amended claim 1 recites a core, an inner component, and an outer component. The core is elastomeric material. The inner component encapsulates the core and is fabric formed by embroidery. The inner component provides a smooth inner contact surface for the core. The outer component surrounds the inner component. The outer component is fabric. Any movement between the inner and outer components is greater than any movement between the inner component and core.

An inner component that is fabric formed by embroidery is not disclosed or suggested by McLeod in view of Ferree. Instead, Ferree teaches the use of fiber-reinforced materials similar to commercial tire construction of a bias-ply, radial-ply, or bias-belted tires. As such, one of ordinary skill in the art would not have been motivated to modify McLeod in view of Ferree to provide an inner component that is fabric formed by embroidery. Accordingly, withdrawal of the rejection for non-statutory obviousness-type double patenting is respectfully requested.

### **Drawings**

The drawings were objected to under 37 CFR 1.83(a) for not showing every feature of the invention specified in the claims. In particular, the recitation in claim 4 of “the core made of multiple components each within its own inner compartment” must be shown in the figures or the features canceled from the claim. Claim 4 has been canceled from prosecution, thus rendering the objection moot.

### **Claim Rejections – 35 USC § 102**

Claims 1, 3, 6, 8-14, 16-18 and 22 were rejected under 35 USC § 102(e) as being anticipated by US 7,066,960 to Dickman (“Dickman”). This rejection is respectfully traversed.

Independent claims 1 and 22 have been amended to recite both an inner and outer component being of fabric formed by embroidery. Dickman does not teach or disclose at least one feature in independent claims 1 and 22. In particular, Dickman does not show an inner component being of fabric formed by embroidery. Instead, Dickman discloses a matrix 41 that is a substrate of bioincorporable continuous fabric that is impregnated with a liquid or semi-liquid polymer. The matrix 41 may be fabric woven from bioincorporable continuous woven fibers, preferably that are woven to criss-cross each other in layers (see col. 7, lines 24-37 and col. 8, lines 1-6). Applicants respectfully submit that the inner component being of fabric formed by embroidery is not anticipated by Dickman and that the rejection under 35 USC § 102(e) should be withdrawn in favor of an indication of allowance. Dependent claims 3, 6, 8-14 and 16-18 being dependent upon claim 1, should be allowable for the reasons set forth above in support of claims 1 and 22, as well as for the additional features they contain. An indication in that regard is respectfully requested.

### **Claim Rejections – 35 USC § 103**

Claim 4 was rejected under 35 USC § 103(a) as being unpatentable over Dickman and further in view of US 5,192,326 to Bao et al. (“Bao”). Claim 4 was canceled from prosecution, rendering this objection moot.

Claim 5 was rejected under 35 USC § 103(a) as being unpatentable over Dickman and further in view of US 7,018,412 to Ferreira et al. (“Ferreira”). As discussed above, Dickman fails to teach each and every element of independent claim 1. The addition of Ferreira does not cure the defect of Dickman. Accordingly, withdrawal of the rejection under 35 USC § 103(a) is respectfully requested.

Claims 19 and 25 were rejected under 35 USC § 103(a) as being unpatentable over Dickman and further in view of Dickman Fig. 6. As discussed above, Dickman fails to teach each and every element of independent claims 1 and 22. Accordingly, withdrawal of the rejection under 35 USC § 103(a) is respectfully requested.

Claims 20 and 24 were rejected under 35 USC § 103(a) as being unpatentable over Dickman in view of US 5,306,309 to Wagner et al. (“Wagner”). Independent claim 20 has been amended to recite an inner embroidered fabric component. As discussed above, Dickman fails to teach each and every element of independent claim 20 and dependent claim 24. The addition of Wagner does not cure the defect of Dickman. Accordingly, withdrawal of the rejection under 35 USC § 103(a) is respectfully requested.

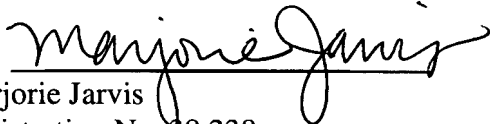
### **CONCLUSION**

The foregoing amendments have been made to place the present application in condition for allowance. It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this

paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment. Favorable consideration and allowance of the claims in this application is respectfully requested. In the event that there are any questions concerning this paper or the application in general, the Examiner is cordially invited to telephone the undersigned attorney so that prosecution may be expedited.

Respectfully submitted,

NUVASIVE, INC.

By:   
Marjorie Jarvis  
Registration No. 39,238

7475 Lusk Boulevard  
San Diego, CA 92121  
Tel.: (858) 320-4536

Date: August 25, 2011